

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PHILLIPS 66 COMPANY,
Plaintiff,
v.
ALEX R. BANANZADEH,
Defendant.

No. 2:21-cv-01747-JAM-JDP

**ORDER GRANTING PLAINTIFF'S
MOTION TO DISMISS
DEFENDANT'S COUNTERCLAIMS**

AND RELATED COUNTERCLAIMS

Phillips 66 Company ("Plaintiff" or "P66") sued Alex R. Bananzadeh ("Defendant" or "Bananzadeh") for breach of contract and declaratory relief. See Compl., ECF No. 1. Defendant filed a cross-complaint for breach of contract, interference with an advantageous business relationship, and violation of the Petroleum Marketing Practices Act (PMPA). See Cross-Compl., ECF No. 14.

Plaintiff moves to dismiss all three of Defendant's counterclaims for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). See Mot., ECF No. 25. Defendant

1 opposes the motion. See Opp'n, ECF No. 26. Plaintiff replied.
2 See Reply, ECF No. 27. For the reasons set forth below, the
3 Court GRANTS Plaintiff's motion to dismiss.¹

4
5 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

6 Defendant owns and operates a gas station ("Station") in
7 Vacaville, California. Cross-Compl. ¶¶ 1,3. Defendant owns 50%
8 of the property with the other 50% held in trust by the Mokalla
9 Family Revocable Trust 2013. Id. ¶ 2. In 2017, Defendant signed
10 a ten-year Branded Reseller Agreement ("BRA") with Plaintiff P66
11 to buy and resell gasoline products under P66's trademark brand,
12 Union 76. Id. ¶ 5; BRA at 3, Ex. 1 to Compl., ECF No. 1. Under
13 the BRA, Defendant also granted P66 the option to purchase the
14 Station if Defendant were to terminate the contract early. BRA
15 at 28. The option would be exercisable within ninety (90) days
16 of Defendant's notice of termination. Id.

17 On October 8, 2019, Defendant sent a ninety-day notice of
18 termination to P66 per the notice requirements of the BRA.
19 Cross-Compl. Cross-Compl. ¶ 20; BRA at 26; Email dated
20 October 8, 2019, Ex. 6 to Motion for Preliminary Injunction
21 ("MPI"), ECF No. 5-3. P66 acknowledged receipt of the
22 termination notice and did not exercise its purchase option.
23 Cross-Compl. ¶ 21; Email dated October 17, 2019, Ex. 3 to Compl.,
24 ECF No. 1. Defendant, however, continued to receive and sell P66
25 gasoline after the alleged termination in January 2020. Cross-

26
27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for February 15, 2022.

1 Compl. ¶ 29.

2 Around the time of Defendant's notice of termination in
3 2019, Defendant entered negotiations with another franchise,
4 Chevron Corporation ("Chevron"), to lease the property and
5 rebrand the facility to sell Chevron gas. Id. ¶ 22.
6 Negotiations collapsed in early 2020 but reopened in June 2021.
7 Id. ¶¶ 23, 26. Defendant and Chevron signed a lease agreement
8 on September 15, 2021. Id. ¶ 26. The lease "included a goodwill
9 payment due within 10 days of Chevron's possession of \$1,750,000
10 and an initial monthly lease payment of \$17,500.00 per month."
11 Id. On June 24, 2021, Defendant provided P66 with a notice of
12 intent to rebrand from P66 to Chevron on October 4, 2021. Id.
13 ¶ 28.

14 P66 took Defendant's notice to rebrand as a new notice of
15 termination. Id. ¶ 31. On September 20, 2021, within ninety
16 days of Defendant's June email, P66 sent notice of its intent to
17 exercise its purchase option. Id. ¶ 35; Purchase Option Exercise
18 Notice, Ex. 4 to Compl., ECF No. 1. P66 filed suit in this Court
19 to enforce its contractual rights. See Compl. Defendant alleges
20 that "[w]hen Chevron learned of the lawsuit, Chevron declined to
21 take possession." Cross-Comp. ¶ 36. Defendant consequently
22 filed counterclaims. See Cross-Compl.

23 On September 24, 2021, P66 filed a motion for a preliminary
24 injunction against Defendant. See Mot. for TRO, ECF No. 5.
25 Following a hearing on November 2, 2021, the Court granted a
26 preliminary injunction against Defendant, enjoining him from
27 transferring to any third-party any rights, interest, and/or
28 title in the property at issue pending resolution of this case.

1 See Order, ECF No. 19. P66 now brings this motion to dismiss
2 Defendant's counterclaims. See Mot.

3
4 II. OPINION

5 A. Legal Standard

6 Federal Rule of Civil Procedure 8(a)(2) requires "a short
7 and plain statement of the claim showing that the pleader is
8 entitled to relief." When a plaintiff fails to "state a claim
9 upon which relief can be granted," the Court must dismiss the
10 suit. Fed. R. Civ. P. 12(b)(6). To defeat a motion to dismiss,
11 a plaintiff must "plead enough facts to state a claim to relief
12 that is plausible on its face." Bell Atlantic Corp. v. Twombly,
13 550 U.S. 544, 570 (2007). Plausibility under Twombly requires
14 "factual content that allows the Court to draw a reasonable
15 inference that the defendant is liable for the misconduct
16 alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

17 "At this stage, the Court 'must accept as true all of the
18 allegations contained in a complaint.'" Id. But it need not
19 "accept as true a legal conclusion couched as a factual
20 allegation." Id. Additionally, the Court should grant leave to
21 amend, unless the "pleading could not possibly be cured by the
22 allegation of other facts." Cooks, Perkiss, & Leiche, Inc. v.
23 N. Cal. Collection Serv., Inc., 911 F.2d 242, 246-47 (9th Cir.
24 1990).

25 B. Analysis

26 1. Breach of Contract Claim

27 Plaintiff moves to dismiss Defendant's counterclaim for
28 breach of contract. Mot. at 3. Under California law, the

1 elements of a breach of contract claim are: "(1) the existence
2 of the contract, (2) plaintiff's performance or excuse for
3 nonperformance, (3) defendant's breach, and (4) the resulting
4 damages to the plaintiff." McVicar v. Goodman Glob., Inc., 1 F.
5 Supp. 3d 1044, 1056 (C.D. Cal. 2014) (citing Oasis West Realty,
6 LLC v. Goldman, 51 Cal. 4th 811, 820 (2011)). "Under the
7 federal rules, a plaintiff may set forth the contract verbatim
8 in the complaint or plead it, as indicated, by exhibit, or plead
9 it according to its legal effect." Boland, Inc. v. Rolf C.
10 Hagen (USA) Corp., 685 F. Supp. 2d 1094, 1102 (E.D. Cal. 2010).
11 Plaintiff submitted the contract as Exhibit 1 to the complaint.
12 Ex. 1 to Compl.

13 Defendant's counterclaim is based on two grounds: First,
14 Defendant alleges that "P66 breached the amended BRA by
15 interfering with [Defendant's] termination of the BRA;" Second,
16 "P66 breached the amended BRA by preventing [Defendant] from
17 rebranding the fuel facility." Cross-Compl. ¶¶ 49- 50. Both
18 alleged breaches occurred in September 2021. Id. ¶ 35.

19 After reviewing the motions and Defendant's cross-
20 complaint, the Court finds that Defendant has failed to state a
21 claim for which relief may be granted. First, Defendant has
22 failed to plead the first element of a breach of contract claim:
23 "the existence of a contract." Fed. R. Civ. P. 12(b)(6);
24 McVicar v. Goodman Glob., Inc., 1 F. Supp. 3d at 1056. When
25 deciding a motion to dismiss, "the Court 'must accept as true
26 all of the allegations contained in a complaint.'" Ashcroft,
27 556 U.S. 662, 678 (2009). Defendant alleges that the contract
28 between Plaintiff and himself terminated in January 2020.

1 Cross-Compl. ¶ 29. Defendant does not allege the existence of
2 any other contract after January 2020. See Cross-Compl. Taking
3 these allegations to be true, Plaintiff's actions after January
4 2020 cannot form the basis for a breach of contract claim,
5 because according to Defendant, no contract existed at that
6 time. Second, assuming the amended BRA was the controlling
7 contract in September 2021, the facts alleged do not establish
8 that Plaintiff breached this contract. Plaintiff's exercise of
9 the Purchase Option cannot constitute a breach since the BRA
10 expressly confirms this right.

11 Accordingly, this claim is dismissed for failure to state a
12 claim for which relief may be granted under Rule 12(b)(6). It
13 is dismissed with prejudice because the Court finds that further
14 amendment would be futile. Deveraturda v. Globe Aviation Sec.
15 Servs., 454 F.3d 1043, 1049 (9th Cir. 2006).

16 2. Interference With An Advantageous Business
17 Relationship Claim

18 Plaintiff moves to dismiss Defendant's counterclaim for
19 interference with an advantageous business relationship. Mot.
20 at 4. Under California Law, the elements for such a claim are:
21 "(1) a valid contract between plaintiff and a third party;
22 (2) defendant's knowledge of this contract; (3) defendant's
23 intentional acts designed to induce a breach or disruption of
24 the contractual relationship; (4) actual breach or disruption of
25 the contractual relationship; and (5) resulting damage."
26 Pacific Gas & Electric Co. v. Bear Stearns & Co., 50 Cal. 3d
27 1118, 1126 (1990) (collecting cases).

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1 Reviewing the cross-complaint, the Court finds Defendant
2 failed to adequately plead element three for this counterclaim,
3 which requires facts showing Plaintiff's "intentional acts
4 designed to induce a breach or disruption of the contractual
5 relationship." Pacific Gas & Electric Co., 50 Cal. 3d at 1126.
6 Although Defendant pled that "Chevron has declined to take
7 possession in accordance with the lease," because "of actions
8 taken by P66," Defendant failed to identify what those actions
9 were or when they took place. Cross-Compl. ¶ 54. As Plaintiff
10 points out, Defendant's second counterclaim indicates that the
11 allegedly interfering conduct occurred before Defendant entered
12 into any binding agreement with Chevron. Cross-Compl. ¶ 28. If
13 that is the case, then Plaintiff's conduct was, by definition,
14 non-interfering. Reply at 3, ECF No. 27. Additionally, the
15 second counterclaim fails to allege any actionable interference.
16 Plaintiff exercised a Purchase Option that was expressly
17 provided under the BRA. As a matter of law, the exercise of a
18 contractual right cannot constitute tortious interference. Ng
19 v. Wells Fargo Foothill, LLC, Case No. CV 12-8942, 2016 WL
20 6661339 at *2 (C.D. Cal. Mar. 18, 2016).

21 Accordingly, Defendant's claim for interference with an
22 advantageous business relationship is dismissed with prejudice.
23 No further amendment of this claim is permitted as such
24 amendment would be futile. Deveraturda, 454 F.3d 1043, 1049
25 (9th Cir. 2006).

26 3. Violation of the PMPA Claim

27 Plaintiff moves to dismiss Defendant's third counterclaim
28 for violation of the Petroleum Marketing Practices Act. Mot.

1 at 6. Defendant alleges that Plaintiff violated its fiduciary
2 duty to the Defendant under the PMPA "by breaching the amended
3 BRA" and "by unreasonably delaying [exercising its purchase
4 option]." Cross-Compl. ¶¶ 59-60.

5 The first element necessary for a claim for breach of
6 fiduciary duty is "the existence of a fiduciary relationship."
7 *Roberts v. Lomanto*, 112 Cal. App. 4th 1553, 1562 (2003). "The
8 absence of any [element] is fatal to the cause of action." *Pierce*
9 *v. Lyman*, 1 Cal. App. 4th 1093, 1101, (1991).

10 Defendant alleges that "[t]he PMPA creates an enforceable
11 fiduciary relationship between [Defendant] and Plaintiff," but
12 he fails to cite any case law or statute to support this
13 assertion, and the Court need not "accept as true a legal
14 conclusion couched as a factual allegation." Cross-Compl. ¶ 58;
15 Opp'n at 7; *Ashcroft*, 556 U.S. at 678. Further, the weight of
16 available authority rests against the assertion that the PMPA
17 creates a fiduciary duty. See Glenside W. Corp. v. Exxon Co.,
18 U.S. A., a Div. of Exxon Corp., 761 F.Supp. 1100, 1115 (D. N.J.
19 1991) (collecting cases and noting that "the courts that have
20 considered whether the PMPA creates a fiduciary relationship
21 between a franchisor and franchisee have found that it does
22 not"). Apart from the PMPA, Defendant does not allege any other
23 source for a fiduciary relationship. See Opp'n.

24 Because the Defendant has failed to establish the first
25 element for a claim for breach of fiduciary duty, the Court
26 finds it appropriate to dismiss his third counterclaim. No
27 further amendment of this claim is permitted as such amendment
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would be futile. Deveraturda, 454 F.3d 1043, 1049 (9th Cir. 2006).

III. ORDER

For the reasons set forth above, the Court GRANTS Plaintiff's Motion to Dismiss Defendant's First, Second, and Third counterclaims WITH PREJUDICE.

IT IS SO ORDERED.

Dated: April 5, 2022


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE